

# What Kind of Nation: Creating a Nation

## Chapter 1. Introduction: The Three-Fifths Compromise [00:00:00]

**Professor Joanne Freeman:** On Thursday, I gave the world's most condensed lecture about the Constitution, and I mentioned three controversies that represented long-standing concerns in Revolutionary America: the question of representation, the problem of slavery, and then the question of a national executive — so that really boils down to the problem of investing power in one man. Now I did manage to discuss all three of those things briefly before the end of the lecture.

I did not have time to discuss one last issue, which I do want to talk about here before I go into the real topic of today's lecture. I just ran out of time. And it actually combines two of those issues. It's the combination of the problem of representation and the problem of slavery, and it's something you've all studied in high school, I am sure, and that is the Three-Fifths Compromise. And in a sentence, the Three-Fifths Compromise is the decision to count three-fifths of a state's slaves in apportioning representatives, presidential electors and direct taxes. So obviously by doing that — and that is a compromise of sorts — it is trying to grapple with the problem of slavery and the question of representation, but obviously that's a compromise that bolsters Southern political power.

Now the great historian of slavery, Yale professor emeritus David Brion Davis, has this little calculation associated with this issue. Davis writes that in the Continental Congress there had been five states in which slavery was a major institution. So the Southern states in the Continental Congress had about thirty-eight percent of the seats in that Congress. Because of the Three-Fifths Compromise, when the first U.S. Congress opened under the new Constitution, Southern states now had forty-five percent of the seats in the House, so thirty-eight to forty-five is a significant slide. Now that doesn't stay ingrained that way, because population increases in the North and things change over time, but certainly that's one way in which you can see the impact of that Three-Fifths Compromise.

Now in a way that Compromise — it's a great segue into my lecture today — it's a great example of the larger dynamic of the period that we're focusing on here toward the end of the course. Because, as we've been looking at in the Constitutional Convention — as we're going to see today when we're looking at ratification — at the heart of the political developments that we're looking at in this period is compromise: compromise between North and South; compromise between big states and small states; compromise between people who want to centralize power and people who want strong state governments.

## Chapter 2. Difficulties in Ratifying the Constitution: Exchanges between Jefferson and Madison, and Ezra Stiles's Diary [00:02:53]

So basically what we're looking at in this period is Americans deciding where and how to invest power, obviously a highly charged decision that would have been impossible to make without a string of compromises. And in a way, as we're going to be discussing today, this is sort of a

**Commented [ND1]:** In the executive branch though, isn't it more of a system? Wouldn't the "founders" have known that the "executive" is the president, the vp, and the rest of the cabinet? Or did they intend for it to really be just the president wielding all the power there?

**Commented [ND2]:** Why is it that we always talk about the representation part, but never really the taxes part?

**Commented [ND3]:** How do historians determine what constitutes a "major" institution?

fundamental question at the heart of the Revolution and its immediate aftermath. Where should the nation invest power? Where does power go?

So in a way, if you look back to the beginning of the course, think about the Revolution, think about some of the central issues, you could say that the Revolution certainly was about power. Right? It was a rebellion against what many perceived as tyrannical power, and that means a lot of things but to sum that all up in a sentence, you could say that. You could say that the 1770s and then the 1780s show Americans trying to figure out how to rebalance and reorganize power — the power of state — that they strip away the British administration and now they have to figure out where else to place power and how to balance it. And we've seen the Articles of Confederation and now the Constitution, which is again part of this ongoing dialogue trying to figure out the balance of power in all sorts of different ways.

And it's no wonder — if you think about what I've already just talked about as far as the Constitution is concerned — it's no wonder that it demanded a string of difficult and often experimental compromises. Creating the Constitution and — as we'll see today — ratifying the Constitution was a difficult process. We tend to think of the outcome and we don't think of the process,

And I'm always reminded of this fact when I read an exchange of letters between Jefferson and Madison, and it's actually written not long after the Constitution goes into effect. I think it's written in early 1790, and at that point Jefferson had been overseas, he'd been in France on diplomatic duty, so he's off in the distance knowing that they're debating the Constitution in the United States, but he's on foreign shores, lounging in salons, chatting about philosophical issues with the French. Meanwhile, Madison is in the Constitutional Convention slaving away, and then he's outside of it sort of hammering away at ratification, so Madison's clawing over the issue of the Constitution; Jefferson's kind of looking from afar.

So he writes this letter to Madison early 1790 saying that no generation should be bound to the actions of any previous generation. It's one of those Jefferson letters in which he's like: 'I have an interesting idea, let me share it with you,' and he starts out with this sort of idea about generations. Each generation is a distinct thing and should never be bound by the one that came before — and it has this famous line. Some of you may have heard it already: "The earth belongs ... to the living," right? — that the living should be controlling things; the dead hand of the past should not have weight in the present.

In typical Jefferson style he then calculates what a generation is. Right? It's not enough to say generations are distinct. He says, Well, how long is a generation anyway? I will calculate this out. Oh, a generation is nineteen years' — by Thomas Jefferson. So he decides a generation is nineteen years and then says to Madison, 'So every nineteen years we need a new Constitution.' [laughs] Okay. So Jefferson, writing to the slaving-away-Constitution guy, says, 'Let's do this every nineteen years. I think that would be much fairer. It wouldn't bind the present to the past.'

Now when I read that letter and then I read Madison's response, Madison is really tactful. Madison's a tactful guy, and he's tactful in his response, but when you look beneath the surface of Madison's reply, I always feel like what you see there is this sustained howl of disbelief, like:

**Commented [ND4]:** This is sort of a large-scale question they're handling, but doesn't it really just boil down to essentially "the same place it's always been" at the end of the day? A lot of the "leadership" when we think of the Revolution and the lead-up to it were white men of means - and that's what we see afterwards. Fundamentally, no matter if you want to invest the large-scale power in the federal or state structure, these men will hold the power.

**Commented [ND5]:** In order to be successful, don't you really need both of these people?

‘What!? Yeah, you try that next time, Teej, and then you come back here and tell me you want to do that in nineteen years. [laughter] No.’ So Madison’s not happy about it but he actually is tactful, and what he says to Jefferson is, he praises Jefferson’s, quote, “many interesting reflections.” [laughs] It’s like: ‘Thank you, Mr. Madison’ — and then adds, unfortunately, quote, they are “not in all respects compatible with the course of human affairs,” or in other words, real people don’t act that way [laughs] — like Jefferson, nice idea, not going to work in implementation. That’s not for real life. For real people, it doesn’t work, but cute idea; keep them coming. Like, it’s interesting. We can just keep the conversation going; we’re not doing another Constitution in nineteen years.

So that’s certainly one compromise that Madison is not willing to sign on to, but of course the compromises don’t end with the closing of the Federal Convention. Creating the Constitution is a major accomplishment. Now it has to be ratified. There needed to be nine states to ratify it for it to go into effect, and each state would have its own ratifying convention to decide the issue. Now things would have been difficult enough if that was the only challenge at hand — if all that they were facing was ratification debates in the states — but the fact is, there were a slew of things that could have gone wrong even before we got to actual ratification.

For one thing, the Confederation Congress might just disapprove of the Constitution and refuse to send it on to the states. It was entirely possible that the Congress might have said, ‘You know, you didn’t just amend the Articles. You wrote a new Constitution. I’m sorry. We don’t consider that valid. Nice try. We’re not going to send it on’ — and that would have been a little interesting moment. It’s just as possible that individual states might refuse to consider it for the same reason. And even if some states did consider this Constitution and did decide to ratify it, if large influential states like Virginia or Massachusetts or New York rejected the Constitution, their influence might actually compel other states to follow their example and vote against it.

So all of this is sort of looming out there. It’s unclear if any of this is going to happen, but for those who are really supporting this new Constitution, they really knew that they had a pretty big challenge facing them. If the Constitution made it to the states for ratification, if the states agreed to consider it, then they had to worry about the actual debate over whether this Constitution was a just, trustworthy division of power. Now, the first horrible possibility did not take place, and the Confederation Congress passes on the Constitution to the states for consideration on September 28, 1787, but still, with the question of ratification looming, clearly the fate of the Constitution is left hanging for a good many months.

And I mentioned last time I was going to go back to Ezra Stiles, because his diary is useful and wonderful — and I’m going to go right back here to Ezra Stiles just for a few minutes. Because his diary shows you one man — certainly one elite, highly educated, influential man with very high-placed friends — but still one man who is watching events unfold related to the Constitution, and is trying to figure out what he thinks about them. He’s interested to know what’s happening. He’s not sure what he thinks and he’s trying to figure this out.

So one thing that his diary shows is that certainly he was intensely interested in whatever the heck was going on in Philadelphia. He didn’t know what was going on in Philadelphia, but he really wanted to know. And on June 19, he apparently asked Yale College seniors to debate the

**Commented [ND6]:** This is interesting, because it seems like what Jefferson is saying isn't totally stupid. Like, it's a logical thought. And Madison's response it also totally understandable. But we seem to often get stuck in these moments (today and in the past) where people immediately jump to "well, that looks nice on paper but it won't work in reality." And sometimes that's speaking from experience, but is it ALWAYS the most practical answer?

**Commented [ND7]:** From the present, it seems like all of this went down smoothly. But really it's easy to see how they might have looked at the challenge ahead and found it insurmountable and given up.

**Commented [ND8]:** Diaries are really interesting, especially in the way that their function seems to change and is gendered over time. Do we believe men's diaries more than women's?

following question: “Whether the States acted wisely in send[ing] Delegates to the Gen. Convention now sitting in Philadelphia?” I don’t know what they’re doing, but Yale students, debate amongst yourselves. Do you think that was a good idea? In November of 1787, the question that he poses for Yale College seniors has changed. Now he says, Yale College seniors, debate for yourself: “Whether it is expedient for the States to adopt the new Constitution?”

**Commented [ND9]:** I would be really fascinated to see a college student debate from the 18th c versus one from today.

In late December, some of his curiosity gets satisfied because he actually gets to spend the night with Abraham Baldwin, who had been a delegate in the Convention, so this is his chance. There’s a guy who was there. He’s going to really sort of plug away at Baldwin, find out what really happened. And at the end of the evening this is what Stiles wrote in his diary:

“I have formed this as my Opinion. 1. That it is not the most p[er]fect Constitution yet 2. That it is a very good one, & that it is advisable to adopt it. However, 3. That tho’ much of it will be permanent & lasting, yet much of it will be hereafter altered by future Revisions. And 4. That the best one remains yet to be investigated.”

And then he goes on to add: “When the Convention was proposed I doubted its Expediency. 1. ” — he’s really a guy for lists —

“1. Because I doubted whether our wisest Men had yet attained Light eno’ to see & discern the best, & what ought finally to prevail. 2. Neither did I think the People were ripe for the Reception of the best one if it could be investigated. And yet 3. I did not doubt but Time & future Experience would teach, open & lead us to the best one. And tho’ we have got a much better one than I expected, & a very good one, yet my Judgt still remains as before.”

And then he gets very specific, and he says, “I think there is not Power enough yet given to Congress for firm Government.” So he thinks about that on the one hand. At the same time he worries that surrendering too much power to this new government will end up, quote, “prostratg the Sovereignty of the particular States.” On the one hand, he worries that the President might become, quote, “an uncontrollable & absolute Monarch.” On the other hand, he says, “I think — ” — First he says, “I think the last as well guarded as possible” so yeah, he might become a monarch, but I think the Constitution did as well as it could to prevent that from happening, and then goes on to say, “I know not whether it is possible to vest Congress with Laws, Revenues, & Army & Navy, without endangering the Ruin of the interior Powers & Liberties of the States.”

And that’s a long passage for someone to put in his own diary, but what’s interesting about that to me is you can see Stiles going back and forth. He says it’s good but there’s probably a better one; it’s better than I expected, but somehow it’s not good enough; it doesn’t give enough power to Congress, but maybe it gives too much power and the states will be prostrated; maybe the President is too powerful, but if we give some of that power to congress maybe Congress will end up really destroying the states. So you can see him there sort of reasoning through what he thinks about the Constitution, and in one way or another, it’s boiling down to the balance of power; where should power be. He’s not exactly sure where power should be. He knows it’s the issue, but he’s not quite sure how to find his way out. So clearly — and Stiles is an example of this — although the delegates of the Constitutional Convention had agreed on a new form of

**Commented [ND10]:** This feels like a totally normal and human response - especially for someone who has a lot of both education AND lived experience. I don't tend to trust people who are 100% confident in every thought they have.

government, there was certainly not some huge, sweeping national consensus on the best kind of government for the new American nation.